



24769

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

January 13, 2003

Reply To
Attn Of: ORC-158

Brett Bowhan
U.S. Department of Energy
Idaho Operations Office
850 Energy Drive
Idaho Falls, Idaho 83401-1563

Darrell Early
Office of Attorney General
1410 N. Hilton, 2nd Floor
Boise, Idaho 83706

Re: EPA Statement of Position Regarding Waste Area Group 3, Operable Unit (OU) 3-13

Dear Mr. Bowhan:

I have enclosed three copies of EPA's Statement of Position Regarding Waste Area Group 3, OU 3-13 for submittal to the representatives of the Dispute Resolution Committee. This Statement of Position provides an explanation of the notice of violation and assessment of penalty and provides EPA's response to DOE's reasons for its failure to perform.

In addition, I am confirming that the members of the DRC have extended the DRC deadline for resolving this dispute to February 7, 2003. I also understand that a meeting of the DRC will take place this week in Boise and the meeting has been limited to one representative per agency.

Sincerely,

Cindy Mackey
Assistant Regional Counsel

cc: Ann Williamson
Wayne Pierre

EPA's STATEMENT OF POSITION REGARDING THE NOTICE OF VIOLATION FOR WASTE AREA GROUP 3, OPERABLE UNIT 3-13

This Statement of Position sets forth the basis and rationale for the notice of violation and assessment of penalty for the Department of Energy's (DOE's) failure to submit an acceptable Remedial Action Report for Operable Unit (OU) 3-13, Group 1. The Remedial Action Report was determined to be inadequate since the underlying remedial action of applying a polyurea surface sealant to the tank farm soil was not completed as required. The failure to complete the interim remedial action selected in the October 1999, Record of Decision (ROD) allows for a continued threat of release of radionuclides and other hazardous substances from the soil to the underlying aquifer.

The Comprehensive Environmental Response, Compensation and Liability Act statute and its implementing regulations, 40 CFR Part 300, National Oil and Hazardous Substances Pollution Contingency Plan (for this document, collectively referred to as "CERCLA") and the Federal Facility Agreement and Consent Order (FFA/CO) impose specific legal obligations, requirements and procedures. These requirements, obligations and procedures are not be changed by the discussions we have had leading toward the Performance Management Plan (PMP). The PMP provides a useful planning and management tool, which can be used to inform cleanup decisions and can lead to changes under the FFA/CO, once the formal change process is followed, as set forth in the FFA/CO.

EPA will work with DOE to develop and implement DOE's Performance Management Plan, but is required by law to adhere to the procedures established by CERCLA and the FFA/CO to make any changes to DOE's obligations under the FFA/CO.

I. CERCLA And The FFA/CO Establish Legal Obligations And Requirements That Govern Cleanup Of INEEL, Including The Tank Farm Soil

CERCLA and the FFA/CO establish a process for determining cleanup standards, selecting remedial actions and meeting deadlines. EPA, DOE and IDEQ entered into a FFA/CO for the INEEL facility in 1991. This FFA/CO established specific commitments and deadlines for performance of the Remedial Investigation and Feasibility Study (RI/FS), RODs and post-ROD documents like a Remedial Action Report at the INEEL facility. A number of RODs have been executed by EPA, DOE and IDEQ for this facility, including the interim ROD for OU 3-13. This ROD required that actions be taken to prevent infiltration from contaminated soil in the tank farm to the underlying aquifer.¹

As required by the FFA/CO, a Scope of Work (SOW) was submitted and approved that set forth the schedule and deliverables required for implementing this ROD.^{2, 3} The SOW required a Remedial Design and Remedial Action (RD/RA) Work Plan, which was submitted by DOE to the Agencies on April 27, 2000, to establish the appropriate measures to be taken to reduce infiltration from the soils to the underlying aquifer. These measures include drainage upgrades and stormwater management in a lined surface impoundment. The use of a spray-on polyurea surface sealant was identified as the best way to reduce infiltration. To demonstrate the field properties of the polyurea technology, a pilot-scale treatability study was performed, the results of which were reported by DOE to EPA in its September 2000 Interim Action Polyurea Demonstration Report as an appendix to the RD/RA Work Plan.⁴ This report, dated September 2000, supported the use of a polyurea surface sealant. In selecting this measure, DOE considered a number of factors, including the use of heavy equipment, maintenance and cost. EPA approved the RD/RA Work Plan on September 20, 2000. The performance of this interim remedial action was scheduled to be completed by March 15, 2002 and the Remedial Action Report, summarizing the action and certifying that the remedy is operational and functional, was due on July 29, 2002.

DOE failed to implement the required interim remedial action but did submit a Draft Interim Remedial Action Report outlining the partial work performed.⁵

II. Changes to CERCLA And The FFA/CO Requirements And Obligations Must Be Made Using Provided Mechanisms

EPA will continue to work with DOE and the Idaho Department of Environmental Quality utilizing the PMP to develop an accelerated and improved cleanup program at INEEL. EPA will work cooperatively with DOE to make the necessary and appropriate changes to the FFA/CO to reflect the PMP, but the appropriate procedures under CERCLA and the Agreement must be followed.

CERCLA and the FFA/CO provide specific legal mechanisms for modifying or amending RODs to alter selected remedial actions. In addition, the FFA/CO provides specific mechanisms for requesting extensions and/or changing schedules. These mechanisms are designed to provide a structured decisionmaking process that ensures that certain statutory requirements (e.g., protection of human health and the environment and Applicable or Relevant and Appropriate Requirements (ARARs)) are met; that public involvement requirements are met; and, other appropriate substantive and procedural requirements are satisfied). These mechanisms are legally binding. As you know, EPA and IDEQ have, on numerous occasions, agreed to extend deadlines per the FFA/CO process to accommodate DOE's needs.

The PMP, on the other hand, is a planning tool for DOE to develop a strategic plan to accelerate cleanup at INEEL. The PMP does not alter any of DOE's legal obligations under CERCLA, the Resource Conservation and Recovery Act (RCRA), the Idaho Hazardous Waste Management Act (HWMA), the National Environmental Policy Act (NEPA), or other laws and

regulations.

EPA has made it clear in its correspondence regarding the PMP that the PMP does not supercede DOE's other obligations. For instance, in EPA's May 7, 2002 letter in support of the PMP, it states, "Finally, we believe it is imperative to state that the Letter of Intent does not modify existing agreements or authorities..."⁶

EPA continues to be willing to work cooperatively with DOE to make necessary and modifications or amendments to the FFA/CO and related documents. However, it is imperative that DOE invoke the mechanisms established by the FFA/CO to effectuate appropriate modifications or amendments. Any such modifications or amendments must continue to protect human health and the environment and comply with substantive State and federal laws.

We recognize that DOE did request an extension in a letter dated August 30, 2001. However, the justification provided by DOE in support of the extension request did not comply with the requirements of Section 13.1(c) of the FFA/CO. DOE was to perform the polyurea spray coating in the months of June and July 2001, according to their working schedule. Instead, DOE re-prioritized projects such that the implementation the tank farm soil sealant work would not be performed during FY'01. With less than 1 month remaining in the fiscal year and after the scheduled date for application of the surface sealant, DOE explained that there were insufficient funds in the FY'01 budget to perform this work to justify the extension request and nonperformance per the SOW schedule. For these reasons, the request was denied by both EPA and IDEQ. DOE did not follow up on the Agencies' denial of their request. DOE neither submitted a more complete justification for extension, nor chose to exercise its right to invoke dispute resolution on the matter. As a result, the denial of this extension is the current binding decision. Since the extension request was denied, DOE remained obligated to perform the interim remedial action and submit the Remedial Action Report by July 29, 2002.

III. EPA Is Prepared To Consider Appropriate Changes To The FFA/CO And Implementing Documents.

EPA is prepared to consider appropriate changes to the FFA/CO and implementing documents (e.g., SOW, ROD), but must ensure that any changes are protective of human health and the environment, meet ARARs and are appropriately documented. DOE's Statement of Dispute suggests that the proposed accelerated tank farm closure activities justify DOE's failure to implement the interim remedial action selected in the OU 3-13 ROD.

The DOE statement of dispute has articulated a number of reasons for its decision not to install the polyurea surface sealant to the tank farm soil. The focus of DOE's positions is the fact that DOE is proposing to accelerate completion of tank closure from 2016 to 2012. Further, DOE has claimed that the final tank farm soil remedy is accelerated by completing cleanup by 2020 rather than 2045. Although DOE is proposing to accelerate completion of tank closure by 4 years, DOE is also proposing to decelerate the final remedy decision on the tank farm soil by 5 years and not implement the interim remedial action. EPA supports DOE's decision to accelerate completion of tank closure. However, failure to seal the contaminated surface soil in the tank farm and extending the final remedial decision deadline, will only result in the generation of potentially millions of gallons of leachate percolating into the underlying groundwater.

A table is attached to this statement that provides detailed information regarding DOE's reasons for its decision not to install the polyurea surface sealant and EPA's responses to these reasons.

IV. Conclusion

EPA continues to endorse DOE's proposal to accelerate cleanup at INEEL in order to protect human health and the environment including the Snake River Plain sole source drinking

water aquifer. Accelerating cleanup should also save in the overall costs of cleanup. EPA does support cleanup acceleration and the PMP, and we will work with DOE to make necessary and appropriate changes to the FFA/CO. However, DOE's PMP does not supercede existing legal documents such as the 1991 Federal Facility Agreement/Consent Order (FFA/CO) which is based on federal and state law. The PMP does not contain the specificity required to support and justify modifications to existing and legally binding cleanup decisions. To make specific changes to the FFA/CO or an existing ROD, there are processes provided under CERCLA and the FFA/CO that need to be followed to ensure that the changes protect human health and the environment, and improve the site's overall cleanup.

Although we endorse the PMP, we believe the existing commitments for necessary remedial actions need to be implemented to reduce releases to the environment. At this time, we do not have sufficient information to justify postponing the October 1999 Operable Unit (OU) 3-13 Record of Decision (ROD) in which DOE committed to undertake necessary interim remedial action to reduce water infiltration through the highly contaminated soil present at the tank farm. The soil is contaminated due to both radionuclide and acidic leaks from piping and valves connecting the tank system. This action was determined to be necessary in the October 1999 ROD to reduce migration of radionuclide contaminants into the underlying groundwater. To date, DOE has provided no information to EPA which justifies waiting for the tank farm tank closure to be concluded before taking steps to minimize precipitation infiltration through the highly contaminated tank farm soil. EPA has assessed the maximum penalty against DOE for their decision against performing the interim action, and the potential serious environmental consequences if action is not implemented. From a CERCLA risk-based approach, EPA cannot support accelerating tank farm closure at the expense of aquifer protection. Waiting for DOE to complete closure of the tank farm tanks (proposed to be completed by 2012) before beginning to limit the ongoing transport of these contaminants through the soil and rocks into the underlying sole source aquifer will not adequately protect human health or the environment.⁷

CONCERNS WITH DOE's STATEMENT OF DISPUTE

#	Page	Location	Issue
1.	1	3 rd ¶	<p>The statement that DOE is attempting, through the PMP to, "...achieve earlier overall cleanup of the tank farm tanks and soil, ..." is not completely accurate as DOE is seeking to accelerate the tank closure decisions and decelerate the soil remediation decision. Although DOE is proposing to accelerate RCRA/HWMA tank closure from 2016 to 2012, DOE has neither proposed an earlier final remedy for the tank farm soil, nor does DOE propose to implement the existing interim action required under the OU 3-13 ROD. Currently, DOE is proposing to delay the OU 3-14 draft ROD submittal date from 2010 until 2015. Although DOE's assertion that the original tank farm soil remedial action will take until 2045 was discussed in the OU 3-13 ROD Responsiveness Summary, this date has no significance as the remedial alternative will not be selected until the ROD, which is currently due in 2010. ⁸</p>

#	Page	Location	Issue
2.	2	Item # I	DOE's excerpt from EPA correspondence supporting the PMP is incomplete. Other applicable excerpts include, e.g., Mike Gearheard's letter to Jerry Lyle, dated May 7, 2002, wherein it states, "Finally, we believe it is imperative to state that the Letter of Intent does not modify existing agreements or authorities." The importance of protecting the underlying sole source aquifer, which is an objective of the Interim Remedial Action, is reflected at Page 5 of the PMP where it states as an objective, "...continued protection of the Snake River Plain Aquifer." By limiting infiltration through the contaminated tank farm soil, leaching of radionuclides into the underlying groundwater is reduced. Finally, in the July 11, 2002, the State of Idaho's and EPA's joint PMP endorsement letter, it clearly states, "...within applicable statutes, regulations and Agreements." EPA's endorsement of the PMP was not intended to substitute for existing requirements but was an agreement to work with DOE to achieve accelerated cleanup. Accelerating cleanup as stated in the Executive Summary of the PMP reads, "...emphasizing risk reduction without compromising protection of the environment, site workers and the public." DOE's decision not to meet this existing ROD fails to meet this standard of protection. 9, 10, 11

#	Page	Location	Issue
3.	3	Item # I 5 th ¶	The understanding that the additional \$100M would achieve accelerated cleanup was not viewed by EPA as dependent upon discontinuing funding for ongoing commitments like the OU 3-13 Interim Remedial Action, on which the June 2002 PMP was silent. ¹² In our Letter of Intent, we agreed to pursue accelerated cleanup at INEEL, recognizing that cleanup is governed by the FFA/CO as one of the primary compliance documents. The Letter of Intent specifically states that nothing in it "...modifies the rights, authorities or obligations established in existing agreements." Unless and until the OU3-13 Interim Remedial Action is modified, neither the PMP nor any other agreement eliminates the requirement for surface sealing of the tank farm soil.
4.	4	Item # II	DOE asserts that when the 1999 ROD was signed, the accelerated cleanup and PMP were not factors under consideration. While this assertion is correct, the Idaho High Level Waste and Facilities Disposition Environmental Impact Statement was expected to identify the preferred alternative for managing the tank liquids. This effort was specifically identified as a factor for considering final remedial action for the tank farm soil under OU 3-14. In fact, the draft ROD deadline date of May 2010 was expected to allow sufficient time for closure activities to proceed. ^{13, 14}
5.	4	Item # III, bullet	The statement that soil remediation would start earlier than originally planned is not consistent with the established OU 3-14 draft ROD deadline date of 2010 and DOE's proposal in their PMP documents to extend this draft deadline date until 2015. ¹⁵

#	Page	Location	Issue
6.	5	Item # III 1 st Bullet	The assumption that soil samples would be collected in the Tank Farm under the OU 3-14 Remedial Investigation and Feasibility Study (RI/FS) was explicitly stated in the 1999 OU 3-13 ROD and the OU 3-14 RI/FS Work Plan. However, the OU 3-14 RI/FS work is not limited to the tank farm soil. The scope of the RI/FS includes the contaminated soil at the tank farm, residual contamination remaining from the old injection well and the SRPA within the INTEC fenceline. Only the tank farm soil investigation may be impacted from tank closure construction activities and we believe that there are ample opportunities to be explored to perform this investigation concurrent with tank closures. ^{16, 17}
7.	5	Item # III 1 st Bullet, 2nd dash	The issue of sampling in the tank farm was not seen as an insurmountable impediment in developing the OU 3-14 RI/FS Work Plan and we would like an explanation as to why DOE believes it is an issue now. As proposed in the Field Sampling Plan, vacuum extraction technology will be used for the installation of probes through the 12 feet of surficial soil which may contain piping. Public utility companies often employ similar techniques to access buried cables or pipes. Given the existing OU 3-14 draft ROD deadline date of May 2010, and DOE's plan to grout Tanks 182 and 183 by the end of 2003, there appears little, if any, impediment to performing necessary soil sampling in the vicinity of these grouted tanks. ^{18, 19}
8.	5	Item # III 1 st Bullet 3 rd dash	Although we do not see the relevancy to the discussion under dispute, no information has been provided by DOE in support of their contention that congestion caused by the phased tank cleaning activities would preclude the taking of soil samples within the 5 acre tank farm area. There appears to be sufficient room in the area to perform both activities in an integrated manner. ²⁰

#	Page	Location	Issue
9.	5	Item # III 1 st Bullet 4 th dash	Modifying the RI/FS Work Plan to consider the sequence of tank closure is a worthwhile suggestion, but is not relevant to the issue under dispute. EPA would work with DOE to modify the RI/FS Work Plan under the provisions of the FFA/CO if DOE pursues this change. ¹¹
10.	5	Item # III 1 st Bullet 4 th dash	We would like clarification on what is meant by the phrase, "as well as mitigating areas of highest risk,..."? Does DOE equate mitigation with the CERCLA term remediation? If yes, is DOE proposing an equivalent alternative interim remedial action? We have not seen any proposal from DOE for an alternative action which achieves the ROD objective of reducing precipitation infiltration by 80%.
11.	5	Item # III 2 nd Bullet	The issue of extending the deadline date for the OU 3-14 RI/FS as it pertains to the High Level Waste Tank Farm soil is not currently an issue in dispute. DOE has not yet submitted a request to extend the deadline date for the OU 3-14 draft ROD, under the provisions established in the FFA/CO. However, as stated previously, the OU 3-14 RI/FS concerns more than the High Level Waste Tank Farm soil. These other data needs can proceed without impact to the ongoing tank closure work. ¹²
12.	5	Item # III 3 rd Bullet 1 st dash	DOE states that tank closure equipment would need to be moved off the tank farm to apply the polyurea and then back on, thus delaying closure activities. However, DOE has not identified how or why this activity would be a problem within the 5 acre footprint of the tank farm. The polyurea application could be performed in stages, moving equipment to one side and then the other within the tank farm, as is commonly done in routine construction projects. This approach would minimize decontamination concerns if it is the basis for DOE's assertion.

	Page	Location	Issue
13.	5	Item # III 3 rd Bullet 2 nd dash	DOE alleges that a well compacted surface is necessary for the application of the polyurea. This statement is in contradiction with DOE's September 2000 Polyurea Demonstration Report, where the application of polyurea to uncompacted gravels was successfully demonstrated. ²³
14.	6	Item # III 3 rd Bullet 3 rd dash	The statement that ongoing tank farm activities would compromise the spray application barrier appears to assume that the liner is a permanent cap, which it is not. Repair of the polyurea has been successfully demonstrated as well as its ability to withstand a 35,000 lb track hoe and a 190,000 lb crane. ²⁴
15.	6	Item IV Bottom ¶	DOE has not yet suggested an alternate way of meeting the 1999 OU 3-13 ROD objective of 80% diversion of annual precipitation, other than to instead pursue a commitment to a four year acceleration in the tank closure. Further, completing closure of all of the tanks is dependent upon receiving both regulatory relief from the agencies and favorable decisions in ongoing law suits, the details of which have yet to be provided by DOE. We are concerned that failure to obtain legal relief will likely result in severe delays to the schedule. ²⁵
16.	6	Item IV Bottom ¶	Reestablishing milestones or extending enforceable deadline dates directly affected by planned accelerated work in the PMP is generally understandable, e.g., delay of the OU 3-14 ROD for the tank farm soil to complete tank closure under RCRA/HWMA. However, extension of existing deadline dates to divert resources from one legal and environmental obligation to fund other activities is a separate issue that requires detailed information on risk and evaluation of alternatives as is done under a formal decision process, e.g., FFA/CO.

#	Page	Location	Issue
17.	7	Item V 1 st ¶	We are concerned that the commitment of completing the tank farm soil remediation by 2020 has been made without knowing what the remediation is or what it will cost. Under the FFA/CO, DOE will identify in the SOW which is due within 21 days of the ROD signature (now scheduled for March 2010), the critical path schedule and work breakdown for implementing remedial action. Further, by CERCLA statute, DOE is required to commence "substantial continuous physical onsite remedial action" within 15 months of the completion of the RI/FS. The existing interim remedial action is designed to mitigate the infiltration of precipitation during the years that DOE will take to complete tank closure. ^{26, 27}
18.	7	Item V 2 nd ¶	EPA (and IDEQ) have asked DOE for information concerning the details of the tank farm closure under their PMP, so that we could better develop an integrated approach to the OU 3-14 tank farm soil sampling. EPA staff have also questioned why DOE was linking non-affected activities under tank farm integration. DOE has yet to provide sufficient information to make environmental decisions affecting legal obligations. ^{28, 29}
19.	7	Item V 3 rd ¶	EPA's response in its letter dated September 19, 2002, stated that DOE had not provided the necessary information to comply with Section 13.1(c) of the FFA/CO. ³⁰

#	Page	Location	Issue
20.	8	Item V Top ¶	The phrase, "real risk reduction" appears to imply that implementing CERCLA RODS is of less importance than possibly accelerating the closure of the high level tanks by 4 years, conditional upon possible regulatory relief. Although removal and treatment of the tank liquids is of great importance, it is still uncertain what the total environmental cost will be for this potential acceleration. DOE's tank closure under the statutory authority of RCRA/HWMA, ahead of their previous schedule and the potential risk reduction gained would need to be compared to the actual risk reduction lost by not meeting existing commitments, e.g., implementation of the tank farm soils interim remedial action.
21.	8	Item VI 3 rd ¶	The statement that DOE repeatedly engaged the regulators in an effort to adjust the milestone in an, "...environmentally responsible manner" is not accurate. DOE only submitted one extension request in August 2001 (which EPA received 9/17/01) for Group 1 which did not comply with the terms of the FFA/CO. In fact, DOE re-prioritized projects arguing funding limitations in the FY'01 budget such that the implementation of the tank farm soil sealant work would not be performed during FY'01. DOE then, with less than 1 month remaining in the fiscal year, used the argument that there were insufficient funds in the FY'01 budget to perform this work which was scheduled to have been completed by the time the extension request was made. DOE has not proposed any alternative other than to stop performing the interim action.

BACKGROUND NOTES

Idaho National Engineering and Environmental Laboratory (INEEL)

- The Superfund National Priority Listed INEEL facility overlies the sole source Snake River Plain Aquifer in southeast Idaho, encompassing 890 square miles. The site-wide CERCLA Federal Facility Agreement (FFA/CO) between IDEQ, DOE-ID and EPA was signed on December 9, 1991. INEEL is divided into 10 Waste Area Groups (WAGs) which are themselves divided into 26 Operable Units. RODs have been completed at all Operable Units with the exception of OU 10-04, OU 10-08, OU 7-13/14 and OU 3-14. No formal compliance inspections were performed at INEEL under the FFA/CO prior to the January 2002 NEIC inspection. EPA is the lead agency for WAG 3 oversight under the FFA/CO.
- The FFA/CO uses primary document submittals rather than performance measures to enforce compliance with provisions to issue stipulated penalties. The requirement for DOE to submit the Group I Interim Action Remedial Action Report by July 29, 2002, is the enforcement tool under the FFA/CO for compelling performance.
- The Interim Action was selected in the 1999 ROD because it alone met the protectiveness threshold over the other alternatives. It alone limited leaching and transport of contaminants in the soil to the underlying perched aquifer and then into the Snake River Plain sole source aquifer.
- In a letter dated August 30, 2001 and received by EPA on September 17, 2001, DOE requested an extension of 3 years for submittal of the Remedial Action Report. Their basis for delay was an insufficiency of funds in FY'01. EPA non-

concurred with the request (see 9/19/2001 letter), in part because DOE did not follow the requirements of Paragraph 28.5 of the FFA/CO. Our letter requested that DOE indicate whether the FY'02 funding level was adequate to perform the necessary work and frame their extension request in accordance with §13.1 of the FFA/CO. DOE did not provide a follow-up response.

- Although EPA received DOE's Draft Interim Remedial Action Report for the OU 3-13 Group I Tank Farm Interim Action on July 28, 2002, DOE did not perform the necessary drainage upgrades, nor install lining in the surface impoundment for stormwater management, nor was the surface sealant applied to the soil to prevent infiltration. In a letter dated August 15, 2002, concerning the draft report, EPA determined that the, "... submission is significantly incomplete and as a result, there is no need for our review." ³¹
- DOE has informally stated through their PMP discussions that by eliminating the INTEC percolation ponds and accelerating HLW tank closures, the surface sealing is unnecessary. Remediation via elimination of the percolation ponds was a component of the OU 3-13 ROD and the acceleration of HLW tank closures will actually postpone the soil remediation decision by 5 years (2010 under current schedule versus 2015 under the PMP proposal) and allow continued leaching of contaminants from the tank farm soil.
- By not undertaking the Interim Action, DOE is allowing > 40 acre feet of recharge (i.e., 5 acres at >8" precipitation/yr over a flat permeable area for 13 years) through the High Level Waste contaminated soil before DOE's proposed ROD date for final remediation.
- Based on an EPA and IDEQ inspection which was conducted January 28, 2002 thru February 1, 2002, potential violations were observed that warranted followup

action. Based on this inspection, DOE was sent a Letter of Inspection Results dated July 22, 2002.

- DOE responded to the Letter of Inspection Results in their letter on August 22, 2002, explaining their perspective on the potential violations and areas of concern. After review and internal discussions, several of the potential violations were reevaluated and the number of potential violations was reduced to 3 violations. As two of these potential violations were administrative, the penalty assessment was limited to the one violation with adverse environmental impacts. This violation was for DOE's failure to perform the OU 3-13 Group I Interim Action and submit the RA Report on the required work.
- DOE has not proposed a new date for completion of the Interim Action, instead they have proposed not to implement the Interim Action. The ROD costs to implement the interim remedial action is approximately \$15M, however, that portion pertaining to surface sealing the tank farms soil is estimated to be less than \$2.5M.

REFERENCES

1. USDOE. October 1999, Final Record of Decision, Idaho Nuclear Technology and Engineering Center, DOE/ID-10660, USDOE, IDEQ and EPA. Pgs IV - v.
2. USDOE. February 2000, Remedial Design/Remedial Action Scope of Work for Waste Area Group 3, Operable Unit 3-13. DOE/ID-10721. Appendix A, Group I schedule.
3. USDOE. September 2000. Remedial Design/Remedial Action Work Plan for Group I Tank Farm Interim Action. DOE/ID-10772. Table 4-1.
4. USDOE. September 2000, OU 3-13 Tank Farm Interim Action Polyurea Demonstration Report. INEEL/EXT-2000-00929. Pg 5-1.
5. USDOE. July 2002. Interim Remedial Action Report for the WAG 3, OU 3-13, Group 1, Tank Farm Interim Action (Draft). DOE/ID-11007.
6. USEPA. May 7, 2002. Michael F. Gearheard, Director, Office of Environmental Cleanup, USEPA, Region 10 to Jerry Lyle, Assistant Manager, USDOE. Draft Letter of Intent for Accelerated Cleanup at INEEL.
7. USEPA. December 4, 2002. Ronald Kreizenbeck, Deputy Regional Administrator, USEPA Region 10 to Warren Bergholz, Jr. USDOE. Notice of Violation and Penalty Assessment.
8. USDOE. November 2002. Accelerating Risk Reduction Through Integration of INTEC Cleanup Activities - Draft. Pg 6.
9. USEPA. May 7, 2002. Michael F. Gearheard, Director, Office of Environmental Cleanup, USEPA, Region 10 to Jerry Lyle, Assistant Manager, USDOE. Draft Letter of Intent for Accelerated Cleanup at INEEL.
10. USEPA. July 11, 2002. C. Stephen Allred, Director, IDEQ and L. John Iani, Regional Administrator, USEPA, Region 10. Support for Department of Energy's Performance Management Plan, Idaho National Engineering and Environmental Laboratory.
11. USDOE. June 2002. Environmental Management Performance Management Plan for Accelerating Cleanup of the Idaho National Engineering and Environmental Laboratory. DOE/ID-11006. Pg i.
12. USDOE. June 2002. Environmental Management Performance Management Plan for Accelerating Cleanup of the Idaho National Engineering and Environmental Laboratory. DOE/ID. Pg 9.
13. USDOE. October 1999, Final Record of Decision, Idaho Nuclear Technology and Engineering Center, DOE/ID-10660. Responsiveness Summary. USDOE, IDEQ and EPA. Pg A-38.
14. USDOE. December 2000. Operable Unit 3-14 Tank Farm Soil and Groundwater Phase I Remedial Investigation/ Feasibility Study Work Plan. DOE/ID- 10676. Pg 6-1.

15. USDOE. June 2002. Environmental Management Performance Management Plan for Accelerating Cleanup of the Idaho National Engineering and Environmental Laboratory. DOE/ID. Pg 6.
16. USDOE. October 1999, Final Record of Decision, Idaho Nuclear Technology and Engineering Center, Responsiveness Summary. DOE/ID-10660, USDOE, IDEQ and EPA. Pg A-38.
17. USDOE. December 2000. Operable Unit 3-14 Tank Farm Soil and Groundwater Phase I Remedial Investigation/ Feasibility Study Work Plan. DOE/ID-10676. Pg v.
18. USDOE. June 2002. Environmental Management Performance Management Plan for Accelerating Cleanup of the Idaho National Engineering and Environmental Laboratory. DOE/ID. Pg 6.
19. USDOE. December 2000. Operable Unit 3-14 Tank Farm Soil and Groundwater Phase I Remedial Investigation/ Feasibility Study Work Plan. DOE/ID-10676. Pg 4-1, Section 4.3.
20. USDOE. October 1999. Final Scope of Work for the Waste Area Group 3, Operable Unit 3-14, Tank Farm Soil and Groundwater Remedial Investigation/ Feasibility Study. DOE/ID-10653. Fig 1-2.
21. USDOE. December 4, 1991. Federal Facility Agreement and Consent Order. Administrative Docket Number 1088-06-29-120. USDOE, IDEQ and EPA. Section 8.21.
22. USDOE. December 2000. Operable Unit 3-14 Tank Farm Soil and Groundwater Phase I Remedial Investigation/ Feasibility Study Work Plan. DOE/ID-10676. Pg v.
23. USDOE. September 2000. OU 3-13 Tank Farm Interim Action Polyurea Demonstration Report. INEEL/EXT-2000-00929. Pg 5-1.
24. USDOE. September 2000. OU 3-13 Tank Farm Interim Action Polyurea Demonstration Report. INEEL/EXT-2000-00929. Pg 4-1.
25. USDOE. October 1999, Final Record of Decision, Idaho Nuclear Technology and Engineering Center, DOE/ID-10660, USDOE, IDEQ and EPA. Pg iv.
26. USDOE. December 4, 1991. Federal Facility Agreement and Consent Order. Administrative Docket Number 1088-06-29-120. USDOE, IDEQ and EPA. Section 12.2.
27. 42 U.S.C. §9620(e)(2).
28. USEPA. July 3, 2002. Michael F. Gearheard, Director, Office of Environmental Cleanup, USEPA, Region 10 to Warren Bergholz, Acting Manager USDOE. Department of Energy's (DOE's) Performance Management Plan Issues for Idaho National Engineering and Environmental Laboratory (INEEL).
29. USEPA. November 21, 2002. Wayne Pierre, Project Manager, Office of Environmental Cleanup, USEPA, Region 10 to Lisa Green, Associate Manager, USDOE. Comments on the Draft Accelerating Risk Reduction Through Integration of INTEC Cleanup Activities.

30. USEPA. September 19, 2002. Wayne Pierre, Project Manager, Office of Environmental Cleanup, USEPA, Region 10 to Kathleen Hain, Director, Environmental Cleanup Division, USDOE. Deadline Extension Request for Operable Unit 3-13.

31. USEPA. August 15, 2002. Wayne Pierre, Project Manager, Office of Environmental Cleanup, USEPA, Region 10 to Kathleen Hain, Director, Environmental Cleanup Division, USDOE. Interim Remedial Action Report for the OU 3-13, Group I, Tank Farm Interim Action (Draft).